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United States  
Department of  
Agriculture

Office of  
Administrative  
Law Judges

Hearing Clerk

Room 1031  
South Building

1400 Independence  
Avenue SW

Washington, DC  
20250-9200

(202) 720-4443  
(202) 720-9776 fax

## CERTIFIED RECEIPT REQUESTED

July 18, 2010

Cole Bros. Circus  
John J. Mercurio, Reg. Agent  
13 South Orange Avenue  
Sarasota, FL 34236

Georgianna Davenport  
d/b/a Gigi's Exotics  
1165 C.R. 6723  
Natalia, TX 78059

John W. Pugh  
47 Flowing Well Road  
Deland, FL 32721

Dear Respondents:

**Subject: John W. Pugh, an individual; Cole Brothers Circus, Inc., a Florida Corporation d/b/a Cole Bros., Cole Bros. Circus and Clyde Beaty Circus; and Georgianna Davenport, also known as GiGi Davenport, an individual d/ba Gigi's Exotics, Respondents - Docket No. 11-0316**

Enclosed is a copy of the Complaint, which has been filed with this office under the Animal Welfare Act.

Also enclosed is a copy of the Rules of Practice which govern the conduct of these proceedings. You should familiarize yourself with the rules in that the comments which follow are not substitutes for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you elected to represent yourself personally. Most importantly, **you have 20 days from receipt of this letter to file with the hearing clerk an original and three copies of your written and signed answer to the complaint.** It is necessary that your answer set forth any defense you wish to assert, and specifically admit, deny or explain each allegation of the complaint. Your answer may include a request for an oral hearing. Failure to file an answer or filing an answer which does not deny the material allegations of the complaint shall constitute an admission of those allegations and a waiver of your right to an oral hearing.

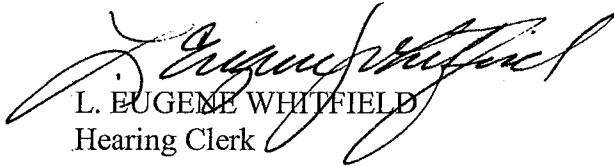
In the event this proceeding does go to hearing, the hearing shall be formal in nature and will be held and the case decided by an Administrative Law Judge on the basis of exhibits received in evidence and sworn testimony subject to cross-examination.

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We also need your present and future telephone number.

Your answer, as well as any other motions or request that you may hereafter wish to file in this proceeding, should be submitted in quadruplicate to the Hearing Clerk, OALJ, Room 1031, South Building, United States Department of Agriculture, Washington, DC 20250-9200. **The hours for filing documents are 8:30 a.m. to 4:30 p.m. Documents received after 4:30 p.m. will be clocked in for the following day.**

Questions you may have respecting the possible settlement of this case, should be directed to the attorney whose name and telephone number appear on the last page of the complaint

Sincerely,

  
L. EUGENE WHITFIELD  
Hearing Clerk

Enclosures-2

Sent to: Colleen A. Carroll, OGC  
Ruth Ann McDermott, APHIS

Lewhitfield: 7/18/11

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 Sarasota, FL 34236

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Georgianna Davenport  
 d/b/a GIGI's Exotics  
 1165 C.R. 6723  
 Natalia, TX 78059

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John W. Pugh  
 47 Flowing Well Road  
 Deland, FL 32721

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UNITED STATES DEPARTMENT OF AGRICULTURE 2011 JUL 18 AM 10:48

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re: ) Docket No. 11-00\_\_  
 )  
 ) 11-0316  
 )  
 JOHN W. PUGH, an individual; COLE )  
 BROTHERS CIRCUS, INC., a Florida )  
 corporation doing business as COLE )  
 BROS., COLE BROS. CIRCUS, and )  
 CLYDE BEATTY CIRCUS; and )  
 GEORGIANNA DAVENPORT, also )  
 known as GIGI DAVENPORT, an )  
 individual doing business as GIGI'S )  
 EXOTICS, )  
 )  
 Respondents. ) COMPLAINT

There is reason to believe that the respondents named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.)(the "Regulations" and "Standards"). Therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Cole Brother Circus, Inc. ("Cole") is a Florida corporation whose registered agent for service of process is John J. Mercurio, 713 South Orange Avenue, Sarasota, Florida 34236. Cole does or has done business as Cole Bros., Cole Bros. Circus, and Clyde Beatty Circus. At all times mentioned herein, respondent Cole was operating as an exhibitor, as that term is used in the Act and the Regulations, and held Animal Welfare Act license 58-C-0080 from January 27, 1977, until February 15, 2008, when that license was terminated.

2. John W. Pugh is an individual whose mailing address is 47 Flowing Well Road, Deland, Florida 32721. At all times mentioned herein, said respondent was the President, Chief

Executive Officer and a director of respondent Cole, and operated as an exhibitor, as that term is used in the Act and the Regulations, or acted for or was employed by an exhibitor (respondent Cole), and his acts, omissions or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions, or failures, as well as the acts, omissions, or failures of respondent Cole.

2. Georgianna Davenport (also known as Gigi Davenport) is an individual whose mailing address is 1165 C.R. 6723, Natalia, Texas 78059. Respondent Davenport does or did business as Gigi's Exotics. At all times mentioned herein and except as otherwise specified, respondent Davenport operated as an exhibitor, as that term is used in the Act and the Regulations, and held Animal Welfare Act license 74-C-0358 until May 19, 2008, when that license was terminated.

3. Respondents operated as a circus or a circus act exhibiting elephants and/or tigers and other exotic animals to the public. The gravity of the violations herein is great, and include the repeated noncompliance with the regulations for veterinary care, handling and licensing.

4. On or about January 17, 2006, respondents Cole and Pugh entered into a written lease-to-purchase agreement with respondent Davenport with respect to two female Asian elephants (Tina and Jewel). Pursuant to the five-year agreement, respondent Davenport "leased" the animals from respondents Cole and Pugh and, at the end of the term, would own the two elephants outright. The total purchase price was \$150,000. The agreement was executed by respondent Davenport and her son Wilber D. Davenport on behalf of "Gigi's Exotics," and respondent Pugh for respondent Cole. Respondent Davenport took physical possession of the elephants on or about January 17, 2006.

ALLEGED VIOLATIONS

5. On or about October 24, 2006, February 15, 2007, March 17, 2007, April 10, 2007, respondents Pugh, Cole and Davenport failed to have an attending veterinarian provide adequate veterinary care to the animals in their custody and control, and failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, one elephant (Jewell) was observed to be underweight, with a prominent spine, and body image that was sunken, and respondents failed to maintain accurate and regular records of veterinary examinations, treatments, tuberculosis testing and weight gain and loss, in willful violation of the Regulations (9 C.F.R. §§ 2.40 (a), (b)(2)).

6. On or about October 24, 2006, respondents Pugh, Cole and Davenport willfully violated the Regulations (9 C.F.R. § 2.100(a), by failing to meet the minimum Standards, as follows:

- a. Respondents failed to store food supplies in facilities that protect them from deterioration and contamination. 9 C.F.R. § 3.125(c).

7. On or about February 15, 2007, respondent Davenport failed to handle an elephant (Boo) during public exhibition so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the elephant and the general viewing public so as to assure the safety of animals and the public, and failed to handle Boo as carefully as possible, in willful violation of the Regulations. 9 C.F.R. §§ 2.131(b)(1), (c)(1).

8. On or about March 30, 2007, respondent Davenport failed to have an attending veterinarian provide adequate veterinary care to the animals in her custody and control, and failed to establish and maintain programs of adequate veterinary care that included the use of appropriate

methods to prevent, control, diagnose, and treat diseases and injuries, the availability of appropriate personnel and services, frequent communication with the attending veterinarian, and adequate guidance to personnel, and specifically, respondents had no records of routine vaccinations and fecal examinations as required by the written program of veterinary care, an elephant (Boo) was observed to have excessive dead skin, urine staining and urine scalding, excessively long cuticles, excessive pad growth and numerous flaps of skin with trapped debris, multiple wounds draining yellowish exudate inside the left ear canal, respondent had failed to communicate animal health issues to the attending veterinarian, and respondent's elephant handler could not demonstrate knowledge of emergency restraint mechanisms, prescribed drugs, or a recapture protocol, in willful violation of the Regulations (9 C.F.R. §§ 2.40 (a), (b)(1), (b)(2), (b)(3), (b)(4)).

9. On or about March 30, 2007, respondent Davenport failed to maintain accurate records of the acquisition and disposition of animals, as required, in willful violation of the Regulations (9 C.F.R. § 2.75(b)(2)).

10. On or about March 30, 2007, respondent Davenport willfully violated the Regulations (9 C.F.R. §§ 2.131(b)(1), (b)(2)(i), (c)(1)), by:

a. failing to handle an elephant (Boo) during public exhibition so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the elephant and the general viewing public so as to assure the safety of animals and the public, and specifically, permitted an unattended child to enter the elephant enclosure and to walk behind the elephant;

b. failing to handle Boo as carefully as possible, and specifically, employed a handler who lacked adequate training, knowledge and experience in handling elephants, and repeatedly hit the elephant with an ankus (elephant hook or goad) during both rides and circus performance; and

c. using physical abuse to work or handle Boo, and specifically, while the elephant was working (giving rides and performing), respondent's handler used an ankus to hit and jab at Boo, resulting in her changing her gait and raising her head.

11. On or about March 30, 2007, respondent Davenport willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. The roof of respondent's transport vehicle for an elephant (Boo) leaks, resulting in deterioration of the wood floor and areas of rust. 9 C.F.R. § 3.137(a)(1).
- b. The doors of respondent's transport vehicle for an elephant (Boo) have exposed nails that protrude outward, and the interior contains ripped chicken wire with sharp edges. 9 C.F.R. § 3.137(a)(2).

12. On or about April 16, 2007, and June 1, 2007, respondent Davenport failed to furnish to APHIS timely and accurate information concerning respondent's business, in willful violation of the Regulations (9 C.F.R. § 2.125).

13. On or about April 16, 2007, respondent Davenport willfully violated the Regulations. (9 C.F.R. § 2.131(b)(1)), by failing to handle an elephant (Boo) as carefully as possible, and specifically, employed a handler who lacked adequate training, knowledge and experience in handling elephants.

14. On or about May 15, 2007, and May 25, 2007, respondents Pugh, Cole and Davenport failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of appropriate personnel, and specifically, both elephants (Tina and Jewell) were observed to be underweight, and respondents failed to maintain accurate and regular records of food consumption, failed to store medicines properly, failed to employ personnel that was adequately trained and capable of caring for the elephants, failed to house the elephants at a facility that could provide for their special needs, and failed to adhere to the recommendations of an elephant specialist, in willful violation of the Regulations (9 C.F.R. § 2.40(b)(2)).



15. On or about May 15, 2007, and June 5, 2007, respondents Pugh, Cole and Davenport failed to handle elephants (Tina and Jewell) as carefully as possible, and specifically, transferred the elephants from North Carolina to the Texas premises of respondent Davenport's son, Wilbur Davenport, against the recommendations of the elephant specialist who had examined the two elephants in April 2007, Mr. Davenport lacked the expertise, skill and training to adequately care for the elephants, and his premises in Texas was not in condition to house the elephants safely and adequately, and was not a site that had been inspected for compliance with the Act and the Regulations, in willful violation of the Regulations (9 C.F.R. § 2.131(b)(1)).

16. On or about June 1, 2007, respondent Davenport operated as an exhibitor without a valid license, and specifically, transferred her business to an uninspected premises to which her license did not apply, in willful violation of the Regulations (9 C.F.R. §§ 2.1(a)(1), 2.5).

17. On or about June 5, 2007, respondents Pugh, Cole and Davenport failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of appropriate personnel, and specifically, both elephants (Tina and Jewell) remained underweight, and respondents failed to maintain accurate and regular records of food consumption, failed to employ personnel that was adequately trained and capable of caring for the elephants, failed to house the elephants at a facility that could provide for their special needs, and failed to adhere to the recommendations of an elephant specialist, in willful violation of the Regulations (9 C.F.R. § 2.40(b)(2)).

18. On or about June 5, 2007, respondents Pugh, Cole and Davenport willfully violated the Regulations (9 C.F.R. § 2.100(a), by failing to meet the minimum Standards, as follows:

- a. There was no adequate indoor enclosure for two elephants (Tina and Jewell)

and the elephants' outdoor enclosure was in disrepair, with electrical wire attached to metal posts. 9 C.F.R. § 3.125(a).

- b. Respondents housed Tina and Jewell in an outdoor enclosure with inadequate shelter from sunlight or inclement weather. 9 C.F.R. §§ 3.127(a), (b).

19. On or about June 27, 2007, respondent Davenport willfully violated the Regulations (9 C.F.R. §§ 2.131(b)(1), (e)), by failing to handle an elephant (Boo) as carefully as possible, and specifically, employed a handler who lacked adequate training, knowledge and experience in handling elephants, and by failing to take steps to alleviate the detrimental effects of housing Boo and two camels in a transport enclosure without air conditioning and scant ventilation, when the recorded temperature was 94 degrees Fahrenheit.

20. On or about June 27, 2007, respondent Davenport willfully violated the Regulations (9 C.F.R. § 2.100(a), by failing to meet the minimum Standards, as follows:

- a. Respondents failed to provide an elephant (Boo) and two camels with sufficient space, and specifically, housed the animals in a transport enclosure for extended periods of time. 9 C.F.R. §§ 3.128, 3.137(c).

21. On or about August 2, 2007, respondents Pugh, Cole and Davenport willfully violated the Regulations (9 C.F.R. § 2.131(b)(1)), by failing to handle two elephants (Tina and Jewell) as carefully as possible, and specifically, employed handlers who lacked adequate training, knowledge and experience in handling elephants, and were not regularly on site to care for the animals.

22. On or about August 2, 2007, respondents Pugh, Cole and Davenport willfully violated the Regulations (9 C.F.R. § 2.100(a), by failing to meet the minimum Standards, as follows:

- a. The elephant enclosure had inadequate drainage, resulting in its being saturated with water, and having large potholes. 9 C.F.R. § 3.127(c).
- b. Respondents failed to keep their premises clean and in good repair, and to place accumulations of trash in designated areas, and specifically, there was

accumulated burnt trash, discarded cars, a trailer and a fragile wooden building adjacent to the elephant enclosure. 9 C.F.R. § 3.131(c).

- c. Respondents lacked a sufficient number of adequately trained employees and a supervisor experienced in animal care. 9 C.F.R. § 3.132.

23. From on or about February 15, 2008, through October 12, 2010, and specifically including July 7, July 8 and October 12, 2010, respondent Cole operated as an exhibitor, and specifically, was, and operated as, a circus, without having obtained a valid license, in willful violation of the Regulations (9 C.F.R. §§ 2.1(a)).

24. On or about July 8, 2010, respondents Cole and Pugh willfully violated the Regulations (9 C.F.R. §§ 2.131(b)(1)), by failing to handle tigers as carefully as possible, and specifically, employed a handler who lacked adequate training, knowledge and experience in handling tigers.

25. On or about July 13, 2010, respondents Cole and Pugh operated as dealers without having obtained a valid license, and specifically, delivered for transportation, or transported, or sold, or negotiated the sale of tigers for use in exhibition, in willful violation of the Regulations (9 C.F.R. §§ 2.1(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondents. The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests that unless the respondents fail to file an answer within the time allowed therefor, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order that respondents cease and desist from violating the Act and the regulations and standards issued thereunder, assessing civil penalties against the respondents in accordance with section 19 of the Act (7 U.S.C. § 2149) for their violations herein, and suspending or revoking Animal Welfare Act license 51-C-0064.

Done at Washington, D.C.  
this 15<sup>th</sup> day of July 2011

*Act*

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Office of the General Counsel  
United States Department of Agriculture  
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